

REMARKS

Applicant respectfully requests reconsideration.

Claims 12, 15-17 and 38-54 were previously pending in this application, with claims 41, 43, 46 and 49-51 being withdrawn from consideration. Upon allowance of a generic claim (i.e., claim 12), Applicant requests consideration of the subject matter of the withdrawn claims.

Claim 12 is amended. Support for this amendment can be found in the specification at least on page 33, lines 14-18. No new matter has been added.

As a result, claims 12, 15-17, 38-40, 42, 44, 45, 47, 48 and 52-54 are currently examination.

Rejection under 35 U.S.C. §112

Claims 12, 15-17, 38-40, 42, 44, 45, 47, 48 and 52-54 are rejected under 35 U.S.C. §112 as failing to comply with the enablement requirement.

The Examiner bases the enablement rejection on the fact that the claims do not recite that the cytosine of the CG dinucleotide is unmethylated. The Examiner states that there is a recognition in the art that unmethylated CpG DNA is immunostimulatory and is able to “drive Th1 immune responses”. The Examiner concludes that the claimed invention is not enabled because “the recited composition or immunostimulatory nucleic acid does not have the same structure that is required according to the state of the art”.

The Examiner’s position is consistent with her position during the examiner-initiated telephone interview of August 15, 2008, a summary of which was provided by Applicant on September 15, 2008. In that telephone interview, in an effort to place the claims into an allowable condition, the Examiner proposed, inter alia, that the claims be amended to recite that the cytosine of the CG dinucleotide is unmethylated.

Applicant has now amended claim 12 to recite that the cytosine of the CG dinucleotide is unmethylated. Support for this amendment can be found in the specification at least on page 33 lines 14-18. The claims therefore recite a class of nucleic acids that is recognized in the art to be immunostimulatory, and more particularly to induce a Th1 immune response, as acknowledged by the Examiner.


Reconsideration and withdrawal of this rejection is respectfully requested.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. C1037.70013US00.

Respectfully submitted,



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